

**BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA**

Re:)	Case No. 2000-1252
Pharmacy Technician Registration of:)	
CATHLEEN ANNE EBERT)	STATEMENT OF CHARGES
Registration No. 1252)	
Respondent)	

COMES NOW, the Complainant, Lloyd K. Jessen, and states:

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners and files this Statement of Charges solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 155A and 272C (2001).
3. On November 20, 2000, the Board renewed the Respondent's, Cathleen Anne Ebert, pharmacy technician registration number 1252, subject to the laws of the State of Iowa and the rules of the Board.
4. Registration number 1252 is current and active until December 31, 2002.
5. The Respondent's current address is 2164 Westridge Drive, Missouri Valley, Iowa 51555.
6. Upon information and belief, the Respondent is currently employed as a pharmacy technician at Valley Drug, 318 E. Erie, Missouri Valley, Iowa 51555.

COUNT I

The Respondent is charged under Iowa Code §§ 155A.6(7) (2001) and 657 Iowa Administrative Code § 22.18 with violation of the laws of the State of Iowa and the United States relating to controlled substances by knowingly and unlawfully acquiring or obtaining controlled substances by misrepresentation, fraud, forgery, deception or subterfuge in violation of Iowa Code §§ 124.403(1)(c)(2), 124.403(c), 124.210, 155A.23 & 155A.24.

COUNT II

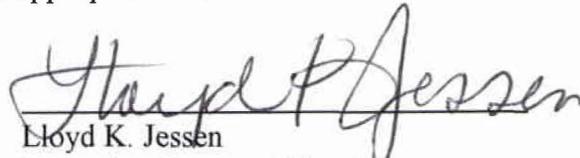
The Respondent is charged under Iowa Code §§ 155A.6(7) (1999) and 657 Iowa Administrative Code § 22.18 with violation of the laws of the State of Iowa and the United States

relating to controlled substances by possessing controlled substances in violation of Iowa Code §§ 124.401(5), 124.403(c), 124.210 & 155A.23.

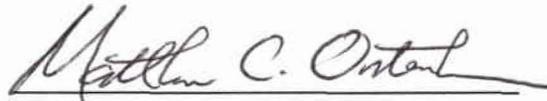
THE CIRCUMSTANCES

1. On or about January 9, 2001, the board office received a report of an apparent theft of controlled substances at Valley Drug, where the Respondent is employed as a pharmacy technician.
2. Upon investigation, an accountability audit of Schedule II, III, IV, and V controlled substances at Valley Drug revealed multiple shortages of Schedule II, III, IV, and V controlled drugs.
3. The investigation revealed that a theft of controlled substances did occur at Valley Drug. The Respondent Pharmacy admitted to the board investigator during the course of his investigation that she had taken the missing drugs from Valley Drug.

WHEREFORE, the Complainant prays that a hearing be held in this matter and that the Board take such action as it may deem to be appropriate under the law.


Lloyd K. Jessen
Executive Secretary/Director

On this 12th day of June, 2001, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.


Matthew C. Osterhaus, Chairperson
Iowa Board of Pharmacy Examiners
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Shauna Russell Shields
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

RE:)	CASE NO. 2000-1252
Pharmacy Technician Registration of:)	DIA NO: 01PHB001
CATHLEEN ANNE EBERT)	FINDINGS OF FACT,
Registration No. 1252)	CONCLUSIONS OF LAW,
Respondent)	DECISION AND ORDER

TO: CATHLEEN ANNE EBERT

On June 12, 2001, the Iowa Board of Pharmacy Examiners (Board) found probable cause to file a Statement of Charges against Cathleen Anne Ebert (Respondent), a registered pharmacy technician. The Statement of Charges alleged two counts:

COUNT I: The Respondent is charged under Iowa Code section 155A.6(7)(2001) and 657 IAC 22.18 with violation of the laws of the state of Iowa and the United States relating to controlled substances by knowingly and unlawfully acquiring or obtaining controlled substances by misrepresentation, fraud, forgery, deception or subterfuge in violation of Iowa Code sections 124.403(1)(c)(2), 124.403(c), 124.210, 155A.23 and 155A.24.

COUNT II: The Respondent is charged under Iowa Code section 155A.6(7)(1999) and 657 IAC 22.18 with violation of the laws of the state of Iowa and the United States relating to controlled substances by possessing controlled substances in violation of Iowa Code section 124.401(5), 124.403(c), 124.210, and 155A.23.

The hearing on the Statement of Charges was held on October 10, 2001 at 2:30 p.m., in the conference room, 400 SW 8th Street, Des Moines, Iowa. The following members of the Board were present: Matthew C. Osterhaus, Chairperson; Paul Abramowitz; Katherine A. Linder; Michael J. Seifert; Leman Olson; Barbara E. O'Roake and G. Kay Bolton. The Respondent appeared and was represented by her counsel, David Richter. The state was represented by Shauna Russell Shields, Assistant Attorney General. The hearing was recorded by a certified court reporter. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. The hearing was closed to the

public, at the request of the Respondent, pursuant to Iowa Code section 272C.6(1)(2001).

After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f), to deliberate its decision. The administrative law judge was instructed to prepare the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with the Board's deliberations.

THE RECORD

The record includes the Statement of Charges; Notice of Hearing; the testimony of the witnesses; and the following exhibits:

- State Exhibit A: Statement of Charges, filed 6/12/01
- State Exhibit B: Certified Mail Receipt
- State Exhibit C: Complaint Report, 1/9/01
- State Exhibit D: Investigative Report (including attached exhibits) by J.L Devine, 1/18/01
- State Exhibit E: Investigative Report (including attached exhibits) by E.Ray Shelden, 1/24/01
- State Exhibit F: Investigative Report (including attached exhibits) by E.Ray Shelden, 2/7/01
- State Exhibit G: Investigative Report (including attached exhibits) by E.Ray Shelden, 3/13/01
- State Exhibit H: Investigative Report (including attached exhibits) by E.Ray Shelden, 4/13/01
- State Exhibit I: Investigative Report (including attached exhibits) by E.Ray Shelden, 5/01/01

- State Exhibit J: Investigative Report (including attached exhibits) by E.Ray Shelden, 5/14/01
- State Exhibit K: Investigative Report (including attached exhibits) by E.Ray Shelden, 5/23/01
- State Exhibit L: Patient Profile Listing for Respondent, 4/27/01
- State Exhibit M: Letter dated 9/23/01 (Wettengel to Osterhaus)
- State Exhibit N: Videotape, Valley Drug Store, 1/21/01 (physical exhibit)
- Respondent Exhibit 1: same as Exhibit L, highlighted

FINDINGS OF FACT

1. On November 20, 2000, the Board renewed the Respondent's pharmacy technician registration number 1252, subject to the laws of the state of Iowa and the rules of the Board. Registration number 1252 is current and active until December 31, 2002. The Respondent is employed as a pharmacy technician at Valley Drug, 318 E. Erie, Missouri Valley, Iowa 51555. (Testimony of Respondent; State Exhibit A)
2. On January 9, 2001, the Board office received a complaint by telephone from Fred Ebert, the owner and pharmacist in charge at Valley Drug Store, in Missouri Valley, Iowa. Fred Ebert is the spouse of the Respondent. Mr. Ebert reported an apparent theft of controlled substances at the pharmacy which was discovered following an internal audit conducted by Mr. Ebert and one of his pharmacists, Sheila Wettengel. There had been no forced entry at the pharmacy so Mr. Ebert suspected that someone had entered the pharmacy using a key. (Testimony of E. Ray Shelden; Fred Ebert; State Exhibits C, M)
3. The complaint was referred to Board investigator E. Ray Shelden for investigation. Mr. Shelden visited Valley Drug on January 11, 2001. Mr. Shelden obtained the necessary records to conduct audits of the pharmacy's controlled drugs.

Mr. Shelden met with Mr. Ebert and learned that five people had keys to the pharmacy: Mr. Ebert, the Respondent, two pharmacist employees, and another pharmacy technician. Mr. Shelden

suggested that Mr. Ebert either change the locks and further secure the building or install a video camera and possibly identify the person responsible. Mr. Ebert was anxious to identify the person responsible and elected to install a security camera. (Testimony of E. Ray Sheldon; Fred Ebert; State Exhibit E)

4. The video camera was installed after business hours on January 15 or 16, 2001. Mr. Ebert, the Respondent, and Pharmacist Wettengel knew about the installation of the camera. Mr. Ebert did not tell the other employees about the installation of the camera. (Testimony of Fred Ebert; State Exhibit E)

5. Board investigator J.L. Devine performed audits of the schedule II controlled (hereinafter, C-2) substances at Valley Drug. In the first audit, sales or usage of the C-2 drugs were tabulated from the computer printout. In the second audit, sales or usage of the C-2 drugs was obtained from the hard copy C-2 prescriptions. The discrepancies between the two audits were due to problems related to the installation of a new computer system on or about October 26, 1999. This audit, which was considered accurate by both the investigator and Mr. Ebert, revealed a shortage of more than 2000 doses of C-2 drugs.

Mr. Sheldon performed audits of the schedule III, IV, and V controlled (hereinafter C3-5) drugs using inventory and usage information provided by the pharmacy. These audits revealed that a very large number of C3-5 drugs were missing from the store, although the exact number of each type of drug that was missing could not be determined due to possible computer and inventory errors. (Testimony of E. Ray Sheldon; State Exhibits D, E, F, J, K)

6. Mr. Ebert and the Respondent were visiting a relative's home until late in the afternoon of January 21, 2001, when they returned to Missouri Valley. On January 21, 2001 at 7:16 p.m. the video camera recorded the presence of a person on the premises of the pharmacy. The person, whose face was completely covered by a hooded parka, entered the pharmacy and went straight to the shelves where the C-2 drugs and the Hydrocodone are stored.

Mr. Ebert could not recall exactly when he viewed the videotape. He did not recognize the person on the tape. In his opinion, the person was significantly taller than the Respondent, who is approximately five feet tall. This opinion was based in part on

the person's ability to easily reach a high shelf in the pharmacy. After viewing the videotape several times, Mr. Ebert called Mr. Shelden. Mr. Shelden picked up the videotape and took it to the Cedar Rapids Police Department to have photographs made from the videotape. (Testimony of E. Ray Shelden; Fred Ebert; State Exhibits F, N)

7. Mr. Shelden contacted Roger Timko, a special agent with the Iowa Division of Narcotic Enforcement (DNE), to assist in the investigation. On February 26, 2001, Agent Timko and Mr. Shelden went to Missouri Valley to conduct interviews. They interviewed Fred Ebert, Sheila Wettengel, and the Respondent.

During her interview, the Respondent admitted that she owned a hooded parka similar to the one in the photos from the videotape but denied that she was the person in the photo. During her interview, the Respondent exhibited mood swings that caused Agent Timko to question her mental condition and to focus on her as a suspect. Agent Timko believed the person on the videotape resembled the Respondent. The Respondent agreed to submit to a polygraph examination. (Testimony of Roger Timko; E. Ray Shelden; State Exhibit G)

8. The polygraph examination was conducted on March 16, 2001, with the consent of the Respondent's attorney. The polygraph was administered by Dennis Wilbur, a Special Agent with the Iowa Division of Criminal Investigation. Agent Timko monitored the polygraph examination by watching it on a video monitor from an adjacent room.

The Respondent signed waivers, was interviewed, underwent the polygraph, and was re-interviewed by both agents after the polygraph results were analyzed. Her responses to several questions indicated emotional stress. In her subsequent interview, the Respondent was told that she had failed the polygraph and that the results indicated she had been deceptive. The Respondent eventually admitted taking some Hydrocodone from Valley Drug because she had pain due to tooth problems and migraines. Initially she said that she may have taken 20-30 pills, but later in the interview agreed it could have been more, possibly a couple of hundred. (Testimony of Roger Timko; Respondent; State Exhibit H)

9. Although the locks were not changed until April 2001, no additional drugs have disappeared from Valley Drug since January 21, 2001. Approximately 78 tablets were taken the night of January 21, 2001. (Testimony of E. Ray Shelden; Fred Ebert)

10. The Respondent testified that she has had recurrent problems with pain from migraines and dental surgeries. She provided the Board with a computer printout of all of her prescriptions from approximately January 2000 through April 2001.

The Respondent has had prescriptions for various controlled substances, including prescriptions for cough syrup containing Hydrocodone for recurrent bronchitis and a prescription for Roxilox following a surgery in September 2000. Between October 3, 2000 and November 2, 2000 the Respondent had dental surgeries and a tooth infection, and her dentist gave her two prescriptions for a small number of Hydrocodone pills for the pain. The Respondent testified that on several occasions she was in pain while at work but had left her prescribed pain medication at home. On these occasions, the Respondent took additional Hydrocodone from the pharmacy shelves for her own use.

While the Respondent received and filled prescriptions from her dentist for small numbers of Hydrocodone pills, the Hydrocodone that she took from the pharmacy shelves was not taken pursuant to a valid prescription. The Respondent was uncertain of the number of pills she had taken, but estimated that it could not have been more than fifty. (Testimony of Respondent; Fred Ebert; State Exhibit L; Respondent Exhibit 1)

11. At the hearing before the Board, the Respondent displayed a very emotional demeanor with mood swings, which was consistent with the demeanor described by Agent Timko during his interviews. The Respondent admitted that she had a "short fuse" when she went to the police station for her interview and explained that when she is mad, she cries. In addition to the stress of this investigation and the stress from her migraines and tooth pain, both of the Respondent's parents and her husband's father have passed away in the past year.

The Respondent has never had a substance abuse evaluation, but testified that she would be willing to submit to one. She went to her physician in the spring of 2001 and asked if there were any laboratory tests that would prove that she was not taking other controlled drugs six months earlier, but was told that there were no such tests. She did not ask her physician for a urinalysis at that time. (Testimony of Respondent; Fred Ebert)

CONCLUSIONS OF LAW

I. Violations

Iowa Code section 155A.6(7) (2001) provides, in relevant part:

155A.6 Pharmacist internship program and pharmacy technician registration.

...

7. The board may deny, suspend, or revoke a pharmacy technician registration for any violation of the laws of this state, another state, or the United States relating to prescription drugs, or for any violation of this chapter or chapter 124, 124A, 126, 147, or 205, or any rule of the board.

657 IAC 22.18 provides that the Board may impose discipline on pharmacy technicians for violations of any state or federal laws relating to prescription drugs, controlled substances, or nonprescription drugs. Possible sanctions include revocation, suspension, or nonrenewal of a pharmacy technician registration, prohibitions of specific acts, probation, civil penalties, and citations and warnings.

Iowa Code section 124.403(1)(c) provides that it is unlawful for any person to knowingly or intentionally acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

Iowa Code section 155A.23 also prohibits a person from obtaining or attempting to obtain a prescription drug by fraud, deceit, misrepresentation, or subterfuge.

Iowa Code section 124.401(5) provides that it is unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of practitioner while acting in the course of the practitioner's professional practice.

The preponderance of the evidence established that the Respondent acquired and possessed controlled substances (Hydrocodone) by deception or subterfuge when, without a valid prescription and without the knowledge of the pharmacist on duty, she removed Hydrocodone from the shelves of Valley Drug for her own use. The Respondent has admitted that she improperly and without prescriber authorization removed

Hydrocodone from the shelves of Valley Drug for her own use. The Respondent has violated Iowa Code sections 124.403(1)(c), 124.410(5) and 155A.23. Pursuant to Iowa Code section 155A.6(7) and 657 IAC 22.18, the Board is authorized to impose discipline on her pharmacy technician registration.

The Respondent maintains that she took less than fifty doses of Hydrocodone, and these were taken during her working hours at the pharmacy. She insists that she did not remove the other controlled drugs that are missing from the pharmacy and also insists that she never entered the pharmacy after hours in order to take drugs. Her purpose in appearing before the Board was to refute the implication that she is responsible for all of the substantial shortages of controlled substances at Valley Drug. The Board agrees that it is unable to conclude, by a preponderance of the evidence in this record, that the Respondent misappropriated all of the controlled substances that are missing from Valley Drug.

II. Sanction

The Respondent has admitted to very serious violations of the laws pertaining to controlled substances in the state of Iowa. The violations adversely affect the public trust and confidence in the Respondent as a registered pharmacy technician. The Respondent has taken no steps to assure the Board and the public that she is not at risk for repeating these violations if she is allowed to continue her practice as a registered pharmacy technician. The protection of the public requires the Board to remove the Respondent's registration as a pharmacy technician until she is able to convince the Board that her return to practice is consistent with the public interest.

DECISION AND ORDER

IT IS THEREFORE ORDERED, that pharmacy technician registration no. 1252, issued to Cathleen Anne Ebert, shall be INDEFINITELY SUSPENDED, effective immediately upon service of this order.

IT IS FURTHER ORDERED, that before an Application for Reinstatement will be considered by the Board, the Respondent must submit to a comprehensive substance abuse evaluation, at a facility approved by the Board, and comply with any recommendations made by the evaluating facility. The Respondent shall sign all necessary releases to allow the facility to share information with the Board. All costs of evaluation and

treatment, if any, are the sole responsibility of the Respondent.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.17, that the Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary/director of the Board shall bill the Respondent for any witness fees or transcript costs associated with this disciplinary hearing. The Respondent shall remit for these expenses within thirty (30) days of receipt of the bill.

Dated this 15th day of Nov. , 2001.


Matthew C. Osterhaus, Chairperson
Iowa Board of Pharmacy Examiners

cc: Shauna Russell Shields, Assistant Attorney General
David Richter, Attorney for Respondent

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.